



DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare and Medicaid Services

Notice of Hearing: Reconsideration of Disapproval  
Texas Medicaid State Plan Amendment (SPA) 14-25

AGENCY: Centers for Medicare and Medicaid Services (CMS),

HHS ACTION: Notice of Hearing: Reconsideration of Disapproval

SUMMARY: This notice announces an administrative hearing to be held on August 6, 2015, at the Department of Health and Human Services, Centers for Medicare and Medicaid Services, Division of Medicaid & Children's Health, Dallas Regional Office, 1301 Young Street, Room 714, Dallas, TX 75202, to reconsider CMS' decision to disapprove Texas' Medicaid SPA 14-25.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the presiding officer by **[insert date 15 days after publication in the Federal Register]**.

FOR FURTHER INFORMATION

CONTACT: Benjamin R. Cohen, Presiding

Officer

CMS

2520 Lord Baltimore Drive

Suite L

Baltimore, Maryland 21244

Telephone: (410) 786-3169

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider CMS' decision to disapprove Texas' Medicaid SPA 14-25, which was submitted to the Centers for Medicare and

Medicaid Services (CMS) on August 26, 2014 and disapproved on April 7, 2015. In part, this SPA requested CMS approval to revise the methodology for calculating the hospital-specific limit for the Disproportionate Share Hospital (DSH) program. Specifically, SPA 14-25 proposed to exclude from the calculation, the portion of a Medicare payment for an individual who is dually-eligible for Medicare and Medicaid that exceeds the Medicaid allowable cost for the service provided to the recipient. This exclusion would permit the state to make Medicaid DSH payments that are above and beyond hospitals' reported uncompensated costs of providing services to Medicaid and uninsured individuals.

The issue to be considered at the hearing is:

- Whether Texas SPA 14-25 is inconsistent with Medicaid DSH requirements of sections 1902(a)(13)(A)(iv) and 1923 of the Social Security Act (Act) because it would provide for payment to disproportionate share hospitals of amounts that exceed the hospital's uncompensated costs which cannot be considered consistent with DSH requirements pursuant to the hospital-specific limit under section 1923(g)(1) of the Act.

Section 1116 of the Act and federal regulations at 42 CFR Part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or

organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Texas announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Kay Ghahremani

State Medicaid/CHIP Director

Health and Human Services Commission

Post Office Box 13247

Mail Code H100

Austin, TX 78711

Dear Ms. Ghahremani:

I am responding to your request for reconsideration of the decision to disapprove Texas' State Plan amendment (SPA) 14-25, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on August 26, 2014, and disapproved on April 7, 2015. I am scheduling a hearing on your request for reconsideration to be held on August 6, 2015, at the Department of Health and Human Services, Centers for Medicare & Medicaid Services, Division of Medicaid & Children's Health, Dallas Regional Office, 1301 Young Street, Room 714, Dallas, TX 75202.

I am designating Mr. Benjamin R. Cohen as the presiding officer. If these arrangements present any problems, please contact Mr. Cohen at (410) 786-3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. If the hearing date is not acceptable, Mr. Cohen can set another date mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR Part 430.

In part, this SPA requested CMS approval to revise the methodology for calculating the hospital-specific limit for the Disproportionate Share Hospital (DSH) program. Specifically, SPA 14-25 proposed to exclude from the calculation, the portion of a Medicare payment for an individual who is dually-eligible for Medicare and Medicaid that exceeds the Medicaid allowable cost for the service provided to the recipient. This exclusion would permit the state to make Medicaid DSH payments that are above and beyond hospitals' reported uncompensated costs of providing services to Medicaid and uninsured individuals.

The issue to be considered at the hearing is:

- Whether Texas SPA 14-25 is inconsistent with Medicaid DSH requirements at sections 1902(a)(13)(A)(iv) and 1923 of the Social Security Act(Act) because it would provide for payment to disproportionate share hospitals of amounts that exceed the hospital's uncompensated costs which cannot be considered consistent with DSH requirements pursuant to the hospital-specific limit under section 1923(g)(1) of the Act.

In the event that CMS and the State come to agreement on resolution of the issues which formed the basis for disapproval, this SPA may be moved to approval prior to the scheduled hearing. I am responding to your request for reconsideration of the decision to disapprove Texas' Medicaid state plan amendment (SPA) 14-025, which was submitted to the Centers for Medicare and Medicaid Services (CMS) on August 26, 2014, and disapproved on April 7, 2015. I am scheduling a hearing on your request for reconsideration to be held on August 6, 2015, at the Department of Health and Human Services, Centers for Medicare and Medicaid Services, Division of Medicaid & Children's Health, Dallas Regional Office, 1301 Young Street, Room 714, Dallas, TX 75202.

Sincerely,

Andrew M. Slavitt

cc: Benjamin R. Cohen



Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18) (Catalog of Federal Domestic Assistance program No. 13.714. Medicaid Assistance Program.)

Dated: June 24, 2015.

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Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

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